

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOHNNY RAY CHEEK, #42969-177, §
Petitioner, §
v. § **3:13-CV-2550-D**
§ **(3:11-CR-157-D-1)**
UNITED STATES OF AMERICA, §
Respondent. §

ORDER

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.

Petitioner's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 is summarily dismissed with prejudice. *See* Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Court.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If petitioner files a notice of appeal,

() petitioner may proceed *in forma pauperis* on appeal.

(X) petitioner must pay the \$455.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

August 28, 2013.



SIDNEY A. FITZWATER
CHIEF JUDGE